IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

RFA.No. 204 of 2007()

OS.24/2003 of SUB COURT, VADAKARA
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APPELLANTS/DEFENDANTS:
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1. KERALA STATE ELECTRICITY BOARD,
   REP. BY ITS SECRETARY, VYDHYUTHI BHAVAN, PATTOM,
   THIRUVANANTHAPURAM.

2. ASSISTANT ENGINEER,
   KERALA STATE ELECTRICITY BOARD,
   NADAPURAM OFFICE, P.O.NADAPURAM.

BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB

RESPONDENTS/PLAINTIFFS:
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1. STATE OF KERALA, REP. BY SECRETARY.

2. THALAPOIL MATHU, W/O.KANNAN,
   47 YEARS, VALAYAM AMSOM,
   VHERUMOTH DESOM, VADAKARA TALUK.

3. VEETTIL BABU, S/O.KANNAN, 25 YEARS,
   COOLIE.

4. VEETTIL RAMA, D/O.KANNAN,
   23 YEARS, SWASTHAM.

5. VEETTIL RAMASEN, D/O.KANNAN,
   21 YEARS, COOLIE.

6. VEETTIL RAGHU, S/O.KANNAN,
   10 YEARS, SWASTHAM.

BY

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & V.K.MOHANAN, JJ.

R.F.A.NO.204 OF 2007

Dated this the 4th day of September, 2007

JUDGMENT

Raman, J.

Appellants are the defendants in the suit O.S.No.24/2003. The suit was instituted by the plaintiffs, who are the legal heirs of deceased Kannan, who was electrocuted from the nearby electric line maintained by the appellant-Board. The deceased was a coconut plucker and on 1/2/1996 at about 4.15 p.m. while he was engaged in the work at the property belonging to one Kelu and plucking coconuts and it was in the course of which that he got electric shock from the line. Though he was taken to the hospital, he succumbed to the injuries. FIR was also registered by the police. Deceased Kannan was aged 50 years at the time of the incident and he was earning Rs.200/- per day. It was alleged that the defendants/appellants are negligent in drawing the line very near to the coconut tree, which led to the incident. Periodical maintenance was not being conducted by the K.S.E.Board. An amount of Rs.3,00,000/- towards compensation and an amount of Rs.20,000/- towards loss of consortium are claimed.

2. The appellants in the written statement contended that the suit is barred by limitation and the suit is not maintainable in law. They

denied that Kannan died due to electrocution. According to them, Kannan used a bamboo ladder, which was kept standing on the coconut tree which was situated 10 feet away from the 11K.V./HT line, which is part of Kunnummal feeder of 110 KV sub station, Kuttiady. While climbing a few steps, he saw partly dried coconut leaf hanging vertically close to the coconut tree trunk and he pulled down the coconut leaf happened to touch 11KV line due to the weight of cudjan and he got electric shock. They disputed the income and age of the deceased. It is also contended that the appellants took utmost care to keep statutory clearance in drawing the said line and the allegation of carelessness made in the plaint was denied.

3. The trial court framed necessary issues. On the side of the plaintiffs, PWs.1 to 3 were examined and Exts.A1 and A2 were proved. There was no evidence either oral or documentary on the side of the defendants/appellants. The only question that arises for consideration is as to whether the court below was right in decreeing the suit based on the evidence on record adduced by the plaintiffs.

4. The court below allowed the suit only partly and an amount of Rs.1,47,000/- was awarded with interest at the normal rate of 6% per annum from the date of the suit till realisation.

5. The court below found that the damages claimed on account of a tortuous act committed by the State and hence governed by Article 113 of

the Indian Limitation Act. Reliance was also placed on the decision of this Court reported in **Kerala State Electricity Board v. Bhaskaran Nair (2002 (3) KLT 324)** as also the decisions of the Apex Court in **S.P.Chengalvaraya Naidu v. Jagannath ((1994) 1 SCC 1)** and **State of Andhra Pradesh v. Challa Ramkrishna Reddy and others (AIR 2000 SC 2083)**. It was therefore found that the suit is well within the time.

6. The contention that the suit is bad for non-joinder of necessary parties also found against. Learned Standing Counsel appearing for the appellants however contended that there is no reliable evidence to warrant the conclusion of negligence on the part of the K.S.E.Board and at any rate, the compensation awarded is too high. We have examined this aspect. PW-1 is the lst plaintiff and PWs.2 and 3 are independent witnesses to prove the incident. PWs.2 and 3 have witnessed the incident. The evidence of PW-2 will also show that Kannan was known to him for a long time. He deposed that while Kannan was plucking coconuts, he cut a cudjan leaf during the course of which he received electric shock from the line, which was near to the coconut tree. Kannan fell down and succumbed to the injuries. PW-3, son of Kelu, the owner of the land, also corroborated the evidence of PW-2. Kannan was aged 50 at the time of the accident. Electric line was drawn only 4 feet away from the coconut tree and the incident took place while Kannan was cutting the

cudjan leaf. There is no dispute that Kannan died of electrocution. The time and place of death is also beyond dispute. Copy of the FIR, registered as FIR.No.28/96, and copy of the post-mortem certificate were produced in the case. Ext.A2 is a post-mortem certificate, the genuineness of which was unquestioned because it is clearly discernible from Ext.P2 that Kannan died of electrocution. The evidence further shows that the line was only at a distance of 4 feet from the coconut tree, though the appellant contended that the distance between the coconut tree and the electric line was 10 feet. No evidence whatsoever was adduced in this regard. They did not mount the box. No documentary evidence was also adduced in this case. Thus the unimpeachable evidence of PWs.2 and 3 based on which the court below came to the conclusion that the incident occurred was from the electric line very near to the coconut tree in question. There is no dispute that the responsibility to supply electric energy and the maintenance of electric line for such supply is to be done by the K.S.E. Bard. So, the primary liability to compensate the sufferer is that of the supplier, the appellants herein. The court below, based on the analysis of the evidence of PWs.2 and 3, came to the conclusion that the defendants are liable for the incident. Defendants miserably failed to prove that there was proper maintenance and periodical checking conducted by them. If proper care and caution were taken, the incident

could have been averted. The amount of compensation was also quantified based on the oral testimony of PW-2, who would state that Kelu used to give Kannan an amount of Rs.100/- per day. There was no contra evidence to this. The average amount of Rs.1,500/- per month was fixed as the income of the deceased and after setting apart 1/3rd of the above amount for his personal expenses, the loss of income was worked out at Rs.12,000/- per annum. 11 was taken as the multiplier and Rs.1,32,000/- was arrived at as the total compensation payable. An amount of Rs.2,500/- each was awarded for funeral expenses and for pain and suffering. Rs.10,000/- was awarded towards loss of consortium. Thus, the amount of Rs,1,47,000/- was awarded as the total compensation payable. On a careful reading of the judgment supported by the evidence on record, we find that the view taken by the court below is reasonable. We do not find any good reason to interfere with the judgment and decree passed by the court below.

Appeal is accordingly dismissed.

Sd/-
P.R.RAMAN,
Judge.

Sd/-
V.K.MOHANAN,
Judge.

kcv.